

New Home Warranty Program

NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS



An Informational Guide for Builders to the New Home Warranty and Builders' Registration Act



State of New Jersey
James E. McGreevey
Governor



Department of Community Affairs
Susan Bass Levin
Commissioner

Greetings from Governor McGreevey and Commissioner Levin


Being a builder in New Jersey means so much more than site planning, framing and sheet rocking. You are helping shape a future for many New Jersey families.

That is a huge responsibility, and that is why New Jersey has the New Home Warranty Program and Builders' Registration Act.

This brochure features the requirements of the Act so you can understand your responsibilities as a builder in our state. It offers information about how to register for the New Home Warranty Program and highlights what the warranties cover to ensure New Jersey's families have the best quality of work for their homes. Finally, it outlines the warranty plans available to you - and how they work for you - should you be faced with claims from homeowners.

New Jersey's builders are an important asset to our economy and the lives we build for our families. Building new homes in the right places in New Jersey is part of how we are going to provide smart growth to our state and places our families can call home.

That is why we are providing this resource to you. We want to help you provide the highest quality of work in the homes you build and provide protection for that work. We think this is an excellent tool to keep on hand and we hope you use it as a reference guide.



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OVERVIEW

The New Home Warranty and Builders' Registration Act (NJSA 46:3B-1et seq) was enacted in 1977. It requires that new homebuilders register with the New Jersey Department of Community Affairs (DCA) and warrant all new homes sold to or built for their customers. The Act specifies builders' responsibilities to warrant their work, ensuring an acceptable quality of materials and workmanship, performance of heating, air conditioning, plumbing and electrical systems, and structural integrity of new homes.

The law established the State of New Jersey New Home Warranty Security Fund to guarantee builder warranties. It also provides for DCA approval of private warranties as alternatives to the State warranty plan.

Finally, the law requires that new homebuilder warranties include a method for resolving disputes over warranty coverage as an alternative to civil litigation through the courts. In the event that a builder does not make repairs on claims for which the builder has been found responsible for through the dispute settlement process, the New Jersey New Home Warranty Security Fund, or the private alternate warranty security fund, will pay the cost of the repairs for homeowners.

Registration for the New Home Warranty Program

Who must register?

All builders of owner-occupied new homes, including single-family, townhouse, duplex, cooperative, condominium, factory built and modular residences are required to register with the New Home Warranty Program.

Each new home building business is required to register separately. The name of the entity that is transferring title to the new home is the entity that must warrant the new home.

Definitions

- A “new homebuilder” is defined as any individual, partnerships, corporation or any business entity engaged in the construction of new homes. It also is those who contract with a general or subcontractor for the construction of a new home for the purpose of sale to an owner.
- The “business” of constructing new homes includes:
 - o Constructing any new home for sale or advertising, or holding oneself out as constructing or being available to construct new homes
 - o The sale or transfer of land to any person and the subsequent participation in the construction of a new home or any part of a new home by the seller or transferor

No person shall be permitted to construct a new home for their own use and occupancy more often than once every five years without being registered as a new homebuilder.

The Registration Process

All new homebuilders must submit a registration application, along with a \$200 non-refundable registration fee, to the New Home Warranty Program. The registration fee is paid by check drawn on the account of the new home building business or a principal of the new home building business.

Corporations, limited partnerships, general partnerships, limited liability companies and joint ventures also must submit a copy of their applicable articles of formation indicating the current officers and/or principals.

If approved, a builder is issued a new homebuilder registration number and card that is valid for two years from the approval date. This card must be shown to local construction officials when obtaining permits to construct a new home.

Maintaining Registration

A new homebuilder registration must be renewed every two years. Renewal requirements are the same as new registrations, including the \$200 non-refundable fee.

Important Notes About Registration

A new homebuilder must maintain a current registration as long as any homes warranted by the builder are in the first two years of coverage.

Builders that fail to register or maintain a current registration are subject to fines of up to \$2,000. Each home sold during the time the builder remains unregistered is considered a separate offense.

Registration Suspension or Revocation

A builder's registration can be suspended or denied for such offenses as failing to maintain up-to-date information in the builder registration file; failing to properly enroll homes in an approved warranty plan; failing to settle claims in accordance with the adopted procedures of the warranty administrator; not fully compensating the warranty plan for claim defaults, penalties and fees; failing to participate in the dispute settlement process; or has a principal with a prior involvement with a suspended or revoked new homebuilder.

A builder's registration can be revoked or denied because of fraud, gross negligence in the practice of building new homes, substantial violations of the New Jersey Uniform Construction Code, or misrepresentation in the registration application. A registration also can be revoked if a builder habitually or egregiously engages in an act that would otherwise lead to a suspension.

Warranty Guidelines

Warranty Coverage

A builder's liability under a warranty is limited by law to the purchase price of the home in the first, good faith sale, or the fair market value of the home on its completion date, if there is no good faith sale.

For 10 years from the commencement date of the warranty, a new home is covered against major structural defects. For the first two years, a new home is covered against defects in the design and delivery of heating, air conditioning, plumbing and electrical systems. During the first year, a new home is covered against defects in workmanship and materials including appliances, fixtures and equipment.

The builder is the warrantor of the new home and must perform warranty service during the first two years of coverage.

Warranty Security

As a condition of registration, each new homebuilder is required to participate in a warranty guarantee program. A builder may apply for acceptance in any one of the DCA-approved private warranty plans or automatically become a participant of the State of New Jersey New Home Warranty Security Fund that is administered by DCA.

Warranty Responsibilities

The builder, or the warranty plan of which the builder is a member, is responsible for providing the homeowner with a full statement of warranty coverage and warranty claims procedures on forms pre-approved by DCA. This transmittal should take place at closing, or if there is no transfer of title, when the builder delivers possession of the new home to the owner. Proof of warranty coverage must be presented by the builder to the local construction official prior to the issuance of a certificate of occupancy. The warranty commences upon first occupancy by the owner or the date of settlement, whichever is sooner.

Warranty Plans

Private Warranty Plans

New homebuilders can only fulfill their obligations to provide a warranty if it is issued through one of the DCA-approved private alternate new home warranty security plans or the State of New Jersey New Home Warranty Plan. Private plans must offer the same warranty coverage as the State Plan, but enrollment rates and other fees vary by plan. The New Home Warranty Program can provide builders with a current list of approved private warranty plans.

Claims Resolution Process for Private Plans

Each private plan must provide a complaint, claims and payment procedure that provides for an attempt at informal settlement between the builder and the homeowner of any dispute over coverage.

The law requires conciliation and/or arbitration of any warranty claim dispute by an independent, third party, and the private plan must provide fixed periods of time for action by the builder or homeowner, pursuant to the arbitration/conciliation decision. For detailed information on the process used by a particular private warranty plan, a representative of the plan should be contacted.

State Warranty Plan

The State Warranty Plan is open to all registered builders. Any builder not participating in an approved private warranty plan is automatically enrolled in the State Plan. The rate for each new home enrolled is based upon a builder's warranty enrollment and dispute settlement records. The contribution percentage to be paid for each new home by a builder not participating in an approved private plan is as follows:

1. If, for at least 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.17;
2. If, for at least seven years, but less than 10 years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.213;
3. If, for at least five years, but less than seven years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.255;
4. If, for at least two years, but less than five years, there has been no payment made, and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.298;
5. If a builder has not previously been registered or has been registered for less than two years, and there has been no payment made and no final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.319;
6. If, within the previous two years, there has been any payment made, or any final determination that a payment must be made, under either the State Plan or an approved private plan, as a result of a claim against the builder or a major structural defect, the contribution percentage shall be 0.425;
7. If, at any time while a builder's contribution percentage is in an amount determined in accordance with #6 in this list, by reason of the builder's having been responsible for a payment having to be made on a claim under either the State Plan or an approved private plan, there is any further payment made, or any final determination that a payment must

be made, under either the State Plan or an approved private plan, as a result of another claim against the builder or a major structural defect, or if a petition in bankruptcy filed by or against a builder and the builder has not yet been discharged or is under the supervision of the court, the contribution percentage shall be 0.595.

These rates are not applicable if no new homes were enrolled during the specified time period. If the builder is under contract to a landowner who is to occupy the home, the selling price is calculated at 125 percent, multiplied by the contract amount.

If any principal in the new home building business is involved in any other new home building business with a less favorable rate, the less favorable rate applies to all new home building businesses that the principal is involved with.

The rate assigned to the new home building business will be used to compute the warranty premiums for each new home enrolled in the State Plan. This rate will be adjusted upon renewal of the builder's registration, when it will be revised based on the new home building business' claims record, or at any time the builder defaults on a claim.

Claims Resolution Process for the State Plan

Unless an emergency situation arises or a major structural defect exists, a homeowner must wait 120 days from the start date of the warranty before a claim can be filed (Request for Dispute Settlement). The homeowner must notify the builder in writing and include a list of defects found in the home. The builder has the choice to repair, replace or pay for the correction of the defects. The builder also is responsible for actual reasonable shelter expenses during any repair that renders the home uninhabitable.

The builder must inspect and repair the defect(s) covered by the warranty within 30 days of the homeowner's notice. If the builder does not, the homeowner may file a formal Notice of Claim and Demand with the New Home Warranty Program. The New Home Warranty Program is then responsible for providing a means of claims resolution.

The process begins with conciliation, in which a skilled, impartial, neutral third party meets with the builder and the homeowner at the new home in an attempt to resolve the conflicts over coverage and performance. This neutral, third party is an independent conciliator/arbitrator. If conciliation is successful, the conciliator/arbitrator will, with permission of both parties, convert the agreement to an arbitration award. If conciliation is not completely successful, the conciliator/arbitrator, with permission of both parties, will proceed to arbitrate the dispute.

As a result of the meeting, the arbitrator will render judgment within a few weeks. This award is legally binding on both parties. The award is limited to a determination of the existence of an eligible defect under the New Home Warranty regulations, whether the builder will repair or replace the defect(s), and the time within which the builder will perform the corrective action. The arbitrator cannot make a monetary award, except in the case of reimbursement for emergency or temporary repairs. There is no cost to the homeowner or builder for conciliation or arbitration under the State Plan. The arbitration award is not appealable through the New Home Warranty Program.

If, after the conciliation step, either the homeowner or builder chooses not to have the dispute settled through arbitration, the dispute will be resolved by a decision of the agency. A New Home Warranty claims analyst is assigned to review the defects, apply the warranty standards and render a written decision. The decision is binding on all parties, but can be appealed within 15 days of its transmittal. If appealed, an administrative hearing through the New Jersey Office of Administrative Law is held to resolve the warranty dispute.

If a builder refuses to repair or replace defects as directed in the written arbitration award or the agency decision, the State Plan assumes financial responsibility for correction of the awarded defects.

notes

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DCA's Division of Codes and Standards establishes and enforces codes for buildings, structures or equipment, in partnership with New Jersey's municipalities, to protect the health and safety of New Jersey's citizens.

The Bureau of Homeowner Protection administers programs that are concerned with the purchase of new homes, as well as units in retirement communities, condominiums and cooperatives.

For additional information, contact:

**New Jersey Department of Community Affairs
Division of Codes and Standards
Bureau of Homeowner Protection
New Home Warranty Program
P.O. Box 805
Trenton, N.J. 08625-0805**

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